IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2255 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GULI ALIAS GIRISH ALIAS GOVAN CHHAGAN PATEL - Petitioner(s)
Versus
STATE OF GUJARAT NOTICE TO BE SERVED UPON & 2 - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for Petitioner(s) : 1,
Mr LR Pujari, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 06/12/2007

ORAL JUDGMENT

1. By this petition, under Article 226 of the Constitution of India, the petitioner has challenged the

order of detention dated 15.1.2007 passed by the District Magistrate, Nanpura, Surat, whereby, in exercise of his powers under sub-section (2) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short, "the Act"), with a view to preventing the petitioner from acting in any manner prejudicial to the maintenance of public order, the petitioner was ordered to be detained. In pursuance of the said order, the petitioner was detained in jail.

I have heard the learned advocate for the detenu and the learned APP for the respondents.

2. It is submitted by the learned advocate, Mrs K.U. Mishra that the detention order of the petitioner is in violation of the constitutional guarantee enshrined under Articles 21 and 22 of the Constitution of India. She submitted that three offences of prohibition being III CR.No.226, 710, and 711 of 2006 came to be registered against the petitioner on 2.4.2006, 4.11.2006 and 5.11.2006 respectively. It is further submitted by the learned advocate that the detenu has made representation through his advocate on 23.11.2007 which is still pending. The petitioner has demanded copy of the FSL report in connection with two of the criminal cases registered at Olpad police station and the original

panchnama in connection with the aforesaid offences which are not supplied and in absence of these vital documents, the petitioner could not make effective representation and thus also the impugned order passed by the detaining authority is required to be quashed and set aside. It is also submitted by her that the other legaly valid documents are also not supplied to the detenu.

3. Learned APP has, in his submission, admitted that the the aforesaid documents were not supplied by the detaining authority.

4. This court has gone through the documents annexed with the petition. It seems that three offences, as aforesaid, under the provisions of Bombay Prohibition Act are lodged after country liquor is found from the detenu. It is also pertinent to note that the FSL report is also not supplied to the detenu which is an important document. Except these three, no other offence has been registered other than the above.

5. In support of her submission, learned advocate for the detenu relied upon an unreported decision in the case of ***Amrutbhai Ramabhai Vagri v. Commissioner of Police, Ahmedabad City & Ors.*** (1994 (2) GLH (U.J.5). In

the aforesaid case, the court, in an identical case, held that the petitioner not furnished with panchnama and chemical analysis report in spite of specific demand, caused prejudice and thus, the detention order was held to be illegal.

6. It is an admitted fact that the detenu has made representation through his advocate demanding very important documents so as to enable him to make effective representation. The detaining authority has failed to provide the documents. Therefore, there is breach of the mandate contained in Article 22 (5) of the Constitution and on that ground alone the petition should succeed. Consequently, the impugned order of detention is liable to be quashed and set aside.

7. In the result, this Special Civil Application is allowed. The impugned order of detention dated 15.1.2007 passed by the District Magistrate, Nanpura, Surat is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct Service is permitted.

[M.D. SHAH, J.]

msp